UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF OHIO

MARK MILLER, : CASE NO. 1:12-CV-663

Plaintiff, :

v. : OPINION & ORDER

: [Resolving Doc. No. <u>3</u>]
CREDIT ACCEPTANCE
: CORPORATION,
:

Defendant.

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

Plaintiff Mark Miller filed this lawsuit in Ohio state court against Defendant Credit Acceptance Corporation (CAC), claiming that CAC "unreasonably interfered with and damaged" his "rights and good credit" when it "failed to report... to credit bureaus" certain payments Plaintiff made pursuant to "an automobile finance agreement." [Doc. 1-1]. Although Miller's original state-court complaint recited that "[t]his action arises out of a breach of contract" by CAC, CAC—in a motion to dismiss filed in state court—responded that Miller apparently had tried to state a claim for violation of the federal Fair Credit Reporting Act. <u>Id.</u> That motion, which argued that Miller's claims were "governed by the Fair Credit Reporting Act," requested dismissal on the ground that the Fair Credit Reporting Act did not provide Miller a private right of action. <u>Id.</u>

Case: 1:12-cv-00663-JG Doc #: 19 Filed: 05/09/12 2 of 4. PageID #: 196

Case No. 1:12-CV-663

Gwin, J.

Nearly five months after CAC filed its motion, the state court denied it. *See* [Doc. <u>11-1</u>]. Five months after that, Miller filed an amended complaint, adding several state-law claims and expressly identifying a claim for violation of the federal Fair Credit Reporting Act. *See* [Doc. <u>1-1</u>]. Twenty-nine days later, CAC filed a notice of removal in this Court. *See id.*

Miller now asks the Court to remand, arguing that CAC was not permitted to remove more than thirty days after service of the original state-court complaint because CAC had notice that the original complaint asserted a federal claim. *See* [Doc. 3]. CAC opposes Miller's motion. *See* [Doc. 11]. For the following reasons, the Court grants Miller's motion to remand.

I.

Whether CAC's notice of removal was timely filed depends solely on whether Miller's original state-court complaint was "removable." 28 U.S.C. § 1446(b)(3). If that complaint was removable, then CAC missed its thirty-day window to remove by nearly a year. See 28 U.S.C. § 1446(b)(1). If, however, Miller's original complaint was not removable, then CAC's notice of removal was timely filed twenty-nine days after service of Miller's amended state-court complaint. See 28 U.S.C. § 1446(b)(3). [1]

Generally, a state-court case is "removable" to federal court if federal-court subject-matter jurisdiction exists. *See* 28 U.S.C. § 1441(a). And federal courts have subject-matter jurisdiction over, among other cases not relevant here, cases in which the plaintiff has asserted a federal claim.

½Miller mistakenly argues that CAC's removal was untimely because CAC failed to file a notice of removal with the *state* court within thirty days after Miller filed his amended complaint. The removal statutes require a removing defendant to file a notice of removal in *federal* court within thirty days after the case becomes removable, *see* 28 U.S.C. § 1446(a) & (b), and then require the defendant to notify the state court "[p]romptly after the filing of such notice of removal," 28 U.S.C. § 1446(d). Notice to the state court "effect[s] the removal," but need only be given promptly, and not necessarily within the thirty-day removal window. 28 U.S.C. § 1446(d).

Case: 1:12-cv-00663-JG Doc #: 19 Filed: 05/09/12 3 of 4. PageID #: 197

Case No. 1:12-CV-663

Gwin, J.

See 28 U.S.C. § 1331. The relevant question, then, is whether Miller's original complaint

sufficiently identified a federal claim such that CAC "had notice of the grounds for removal."

Lovern v. General Motors Corp., 121 F.3d 160, 162 (4th Cir. 1997).

Miller's original state-court complaint did not explicitly identify any federal claim, but it did

assert (1) that the lawsuit was "necessary to protect the rights and good credit of Plaintiff which has

been unreasonably interfered with and damaged by the actions of Defendant"; (2) that "Defendant

failed to report [Miller's regular car] payments to credit bureaus causing Plaintiffs [sic] credit to be

substantially harmed"; and (3) that, as a result of CAC's failure, "Plaintiff has been unable to obtain

new lines of credit for purchases." [Doc. 1-1]. In addition, Miller's prayer for relief requested

"attorney's fees," a remedy generally unavailable for breach-of-contract claims. *Id.*

It's unsurprising, then, that CAC recognized the federal Fair Credit Reporting Act claim at

the heart of Miller's original complaint. As CAC wrote in its motion to dismiss: "Although Plaintiff

claims that this action 'arises out of a breach of contract by the Defendant', Plaintiff's Complaint

pleads a claim for violations of the Fair Credit Reporting Act." <u>Id.</u> Because Miller's original state-

court complaint "reveal[ed] a ground for removal," CAC was "bound to file a notice of removal

within 30 days" after receipt of that complaint. <u>Lovern</u>, 121 F.3d at 162. CAC instead elected to

proceed in state court, a course it cannot now change.

III.

Because this case was removable in April 2011, CAC's notice of removal was not timely

-3-

Case: 1:12-cv-00663-JG Doc #: 19 Filed: 05/09/12 4 of 4. PageID #: 198

Case No. 1:12-CV-663
Gwin, J.

filed. Accordingly, the Court GRANTS Miller's motion to remand, [Doc. 3].

IT IS SO ORDERED.

S/ James S. Gwin
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE